IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 9-3-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.17739 of 2004
W.P.M.P.No.21092 of 2004
W.V.M.P.No.1330 of 2005

S. Sundaravadivelu ... Petitioner

Vs.

The Superintendent of Police,
Chengalpattu East District,
St.Thomas Mount,
Chennai - 16. ... Respondent

This writ petition has been filed under article 225 of Constitution of India, praying this Court to issue a writ of certiorari, calling for the records on the file of the respondent in connection with the Charge Memo issued by him in his proceedings Tha.Pa.No.46/2004 under Section 3(aa) dated 7.4.2003 and quash the same.

For Petitioner : Mr.S.Selvathirumurugan

For Respondents : Mr.R.Lakshminarayanan,
Government Advocate

O R D E R

Petitioner challenges the charge memo dated 7.4.2003 issued by the respondent in this writ petition.

2. While admitting the writ petition, this Court, taking note of the rule position, granted interim stay of all the proceedings in WPMP No.21092 of 2004 on 28.6.2004. Respondent filed WVMP No.1330 of 2005 to vacate the interim stay and when the said petition came up for hearing, learned counsel on both sides agreed that the main writ petition itself can be taken up for final disposal.

3. The brief facts necessary for disposal of the writ petition are as follows,

(a) Petitioner was appointed as Sub-Inspector of Police by direct recruitment after selection by the Police Recruitment Board on 27.9.1987 and he was promoted as Inspector of Police on 18.8.1998. According to the

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petitioner, he received 48 rewards and he is having unblemished record of service.

(b) Petitioner, while working as Inspector of Police in Ambattur Prohibition Wing, a raid was conducted by the him along with two Head Constables by name Ravichandran and Xavier, on 13.6.2000 at Maduravoil, on the information received that some ante-social elements are selling illicit arrack, and during the said raid, one Ramadoss, a habitual offender was arrested at 11.00 a.m. On 13.6.2000. He was brought to the station at 1.00 p.m. and two Head Constables by name Nazer and Manohar took the accused to the Judicial Magistrate No.II, Poonamallee for remand, who remanded the accused till 27.6.2000 from 13.6.2000. Subsequently, the accused was sent to the prison at Puzhal. According to the petitioner, in the remand order dated 13.6.2000, no complaint of ill-treatment by the Police was made by the accused. However, the accused Ramadoss died on 17.6.2000 at Royapettah Government Hospital and as per the post mortem certificate the death was due to cardiac anoxia with multiple non-grievous injuries.

(c) Petitioner further states in the affidavit that an enquiry under PSO 145 was conducted in which petitioner gave a statement that the said accused was remanded for judicial custody on 13.6.2000 itself, however the remand order could not be produced before the enquiry officer. In this regard a charge memo dated 7.4.2003 was issued to the petitioner and two Head Constables Ravichandran and Xavier, alleging that on 13.6.2000 they arrested the accused for prohibition offence and kept the accused under Police Custody and tortured him till 15.6.2000 and only on 15.6.2000 the accused was remanded to judicial custody and he was not feeling well in the prison and died on 17.6.2000 and that the injuries found on the body of the deceased could not be inflicted by any other person, except by the Police.

(d) The above said charge memo issued under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules is challenged in this writ petition on the ground that the charge framed by the Superintendent of Police/respondent herein is without jurisdiction as he is not the competent authority to issue the charge memo. The learned counsel for the petitioner argued that as per Rule 4-A of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, as amended by G.O.Ms.No.160, Home (Pol.V) Department dated 1.2.1996, in cases, where more than one member of the force are involved, the authority competent to institute disciplinary proceedings and impose any of the penalties specified in Rule 2 shall be the authority in respect of the Officer, who holds the highest post and the disciplinary proceedings against all of them shall be taken together. The learned counsel citing the said rule, argued that the petitioner being the Inspector of Police, the disciplinary authority can only the Deputy Inspector General of Police and therefore the impugned charge memo issued by the Superintendent of Police is in violation of Rule 4-A.

(e) Apart from the said jurisdictional issue, some factual aspects were also raised in the grounds, but the same are not relevant for deciding the jurisdictional issued.

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4. The learned counsel appearing for the petitioner submitted that the Tamil Nadu Administrative Tribunal by order dated 2.7.2002 in O.A.No.8141 of 1998, etc., quashed similar charge memos issued by the incompetent authorities and the department challenged the said orders before this Court in W.P.No.24506 to 24512 of 2003 and a Division Bench of this Court by judgment dated 5.4.2005 held that if more than one person are involved in a charge, the disciplinary authority of the highest rank officer from among the persons charged, shall initiate the disciplinary proceeding as per Rule 4-A of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules. By holding so, this Court agreed with the findings given by the Tribunal and dismissed those writ petitions. The learned counsel further argued that the said judgment squarely applies to the facts of this case and the charge memo issued by the respondent herein/Superintendent of Police against the petitioner is unsustainable as he has no jurisdiction to issue the charge memo to the petitioner, who is an Inspector of Police.

5. The learned counsel for the respondents pointing out the statement in paragraph 6 of the Counter affidavit wherein it is stated that the charge memo issued by the Superintendent on 7.4.2003 was approved by the Deputy Inspector General of Police, Chengalpattu on 7.4.2003 and therefore the said charge memo issued is valid and thus the spirit of Rule 4-A is complied with.

6. I have heard the rival submissions made by the learned counsel appearing for the petitioner as well as the learned Government Advocate.

7. A perusal of the charge memo dated 7.4.2003 reveals that in the charge memo issued by the respondent herein, nowhere it is stated that as per the directions of the Deputy Inspector General of Police, the same is issued. It is well settled in law that when a statute prescribes a particular authority for taking an action, that authority alone is competent to initiate such action.

8. In the decision reported in AIR 1989 SC 1582 (Marathwada University v. S.B.R.Chavan) the Honourable Supreme Court considered a similar issue and in the facts and circumstances of that case held that the Vice-Chancellor not being the disciplinary authority, the suspension order issued by him is unsustainable. The relevant portion in paragraph 19 is extracted hereunder,

> "Counsel for the appellant argued that the express power of the Vice-Chancellor to regulate the work and conduct of officers of the University implies as well, the power to take disciplinary action against officers. We are unable to agree with this contention. Firstly, the power to regulate the work and conduct of officers cannot include the power to take disciplinary action for their removal. Secondly, the Act confers power to

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appoint officers on the Executive Council and it generally includes the power to remove. This power is located under S.24(1) (xxix) of the Act. It is, therefore, futile to contend that the Vice-Chancellor can exercise that power which is conferred on the Executive Council. It is a settled principle that when the Act prescribes a particular body to exercise a power, it must be exercised only by that body. It cannot be exercised by others unless it is delegated. The law must also provide for such delegation."
(Emphasis supplied)

9. Applying the principle laid down in the above cited decision and also following the judgment of the Division Bench of this Court in W.P.Nos.24506 to 24512 of 2003 referred to above, I hold that the respondent herein is not competent to issue charge memo to the petitioner as per Rule 4-A of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules and consequently the impugned charge memo issued by him is unsustainable.

10. Consequently, the writ petition is allowed. The impugned charge memo dated 7.4.2003 is quashed. However, it is made clear that this order will not stand in the way of the appropriate authority initiating fresh proceedings, if it is so warranted. No costs. Connected WPMP No.21092 of 2004 and WVMP No.1330 of 2005 are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vr

To

The Superintendent of Police, Chengalpattu East District,
St.Thomas Mount, Chennai - 16.
+ 1 CC to Mr. S. Selvathirumurugan, Advocate SR NO 11671

W.P.No.17739 of 2004
Dated : 9-3-2006

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